



DEPARTMENT OF COMMERCE

International Trade Administration

A-570-863

Honey from the People's Republic of China: Preliminary Rescission of the Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce ("Department") is conducting the administrative review of the antidumping duty order on honey from the People's Republic of China ("PRC") for the period of review ("POR") December 1, 2009, to November 30, 2010. As discussed below, we have preliminarily determined to rescind this administrative review because we have found the sales made by Dongtai Peak Honey Industry Co., Ltd. ("Dongtai Peak") that entered during the POR were not bona fide.

EFFECTIVE DATE: [Insert date of publication in the Federal Register.]

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand, telephone: (202) 482-3207, or Josh Startup, telephone: (202) 482-5260; AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Background

The Department received timely requests from Petitioners¹ and Dongtai Peak, a Chinese producer and exporter of honey, in accordance with 19 CFR 351.213(b), during the anniversary month of December, to conduct a review of honey exporters from the PRC. On January 28, 2011, the Department initiated this review with respect to all 60 requested companies.²

On February 7, 2011, Mongolia Altin Bee-Keeping Co., Ltd., Suzhou Shanding Honey

¹The American Honey Producers Association and Sioux Honey Association, collectively "Petitioners."

²See Initiation of Antidumping and Countervailing Duty Administrative Reviews, 76 FR 5137 (January 28, 2011) ("Initiation Notice").

Product Co., Ltd., and Wuhu Fenglian Co., Ltd. submitted a letter certifying they had no shipments during the POR and requesting the Department rescind this review with respect to each of them.³ On February 24, 2011, Petitioners withdrew the request for review for all companies requested except for Dongtai Peak. On March 9, 2011, the Department published a notice of partial rescission in the Federal Register for all of the companies for which the request for review was withdrawn.⁴ Dongtai Peak remains the only company subject to this review. On August 4, 2011, the Department published a notice extending the time period for issuing the preliminary results by 120 days to December 31, 2011.⁵

Respondent Selection

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter or producer of the subject merchandise.⁶ However, section 777A(c)(2) of the Act gives the Department discretion to limit its examination to a reasonable number of exporters or producers, if it is not practicable to examine all exporters or producers for which the review is initiated.

On January 21, 2011, the Department released CBP data for entries of the subject merchandise during the POR under administrative protective order (“APO”) to all interested parties having access to materials released under APO inviting comments regarding the CBP data and respondent selection. The Department did not receive any comments on the CBP data.

On February 16, 2011, the Department selected Dongtai Peak as the only mandatory

³Companies have the opportunity to submit statements certifying that they did not ship the subject merchandise to the United States during the POR.

⁴See Honey from the People’s Republic of China: Partial Rescission of Antidumping Duty Administrative Review, 76 FR 12940 (March 9, 2011).

⁵See Ninth Administrative Review of Honey From the People’s Republic of China: Extension of Time Limit for the Preliminary Results, 76 FR 47238 (August 4, 2011).

⁶See also 19 CFR 351.204(c) regarding respondent selection, in general.

respondent.⁷ As noted above, Mongolia Altin Bee-Keeping Co., Ltd., Suzhou Shanding Honey Product Co., Ltd., and Wuhu Fenglian Co., Ltd. submitted a letter certifying they had no shipments during the POR and are no longer subject to this review. As discussed below, Petitioners have alleged that Dongtai Peak's sales were non-bona fide transactions,⁸ and therefore did not provide a reasonable or reliable basis for the Department to calculate a dumping margin.

Separate Rates

In the Initiation Notice, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME reviews.⁹ Other than Dongtai Peak's Section A portion of the questionnaire response filed on March 16, 2011, no companies submitted a separate rate application or certification.

Questionnaires

On February 25, 2011, the Department issued its initial non-market economy ("NME") antidumping duty questionnaire to the mandatory respondent Dongtai Peak. Dongtai Peak timely responded to the Department's initial and subsequent supplemental questionnaires between February and December 2011.¹⁰

Period of Review

The POR is December 1, 2009, through November 30, 2010.

Scope of the Order

The products covered by the order are natural honey, artificial honey containing more than

⁷ See Memorandum to James Doyle, Director, AD/CVD Operations, Office 9, from Josh Startup, International Trade Analyst, Office 9; Selection of Respondents for the Antidumping Review Honey from the People's Republic of China ("PRC"), dated February 16, 2011.

⁸ See, e.g., Petitioners' submissions received on August 1, 2011, October 14, 2011, and November 21, 2011.

⁹ See Initiation Notice.

¹⁰ While the Department continued to receive submissions from both Petitioners and Dongtai Peak through December, we were unable to take submissions submitted on or after December 13, 2011, into consideration for these preliminary results due to the close proximity to statutory deadlines. Submissions received on or after December 13, 2011, will be taken into consideration for the final results.

50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise subject to the order is currently classifiable under subheadings 0409.00.00, 1702.90.90 and 2106.90.99 of the Harmonized Tariff Schedule of the United States (“HTSUS”). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department’s written description of the merchandise under the order is dispositive.

Bona Fide Analysis

In this administrative review, Petitioners alleged that the sales of Dongtai Peak were non-bona fide. Therefore, because there was an allegation regarding the bona fide nature of these sales the Department undertook that analysis in this review. Where all of the sales in a review are deemed as non-bona fide commercial transactions, this must end the review.¹¹ To determine whether a sale in a review is unrepresentative or extremely distortive, and therefore excludable as non-bona fide, the Department employs a totality of the circumstances test.¹² In examining the totality of the circumstances, the Department looks to whether or not the transaction is “commercially unreasonable” or “atypical.”¹³ Atypical or non-typical in this context means unrepresentative of a normal business practice.¹⁴

¹¹See Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States, 366 F. Supp. 2d 1246, 1249 (CIT 2005) (“TTPC”).

¹²See Glycine From The People's Republic of China: Rescission of Antidumping Duty New Shipper Review of Hebei New Donghua Amino Acid Co., Ltd., 69 FR 47405, 47406 (August 5, 2004).

¹³See Freshwater Crawfish Tail Meat from the People’s Republic of China: Notice of Final Results of Antidumping Duty New Shipper Review, and Final Rescission of Antidumping Duty New Shipper Review, 68 FR 1439, 1440 (January 10, 2003).

¹⁴See Hebei New Donghua Amino Acid Co., Ltd. v. United States, 374 F. Supp. 2d 1333, 1339 (CIT 2005) (“New Donghua”), citing Windmill Int’l Pte., Ltd. v. United States, 193 F. Supp. 2d 1303, 1313 (CIT 2002) (“Windmill”); see also TTPC, 366 F. Supp. 2d at 1249-50.

The Department examines the bona fide nature of a sale on a case-by-case basis, and the analysis may vary with the facts surrounding each sale.¹⁵ In TTPC, the court affirmed the Department's practice of considering that "any factor which indicates that the sale under consideration is not likely to be typical of those which the producer will make in the future is relevant,"¹⁶ and found that "the weight given to each factor investigated will depend on the circumstances surrounding the sale."¹⁷ The Court stated that the Department's practice makes clear that the Department is highly likely to examine objective, verifiable factors to ensure that a sale is not being made to circumvent an antidumping duty order.¹⁸ Thus, a respondent is on notice that it is unlikely to establish the bona fides of a sale merely by claiming to have sold in a manner representative of its future commercial practice.¹⁹

In evaluating whether sales subject to review are commercially reasonable, and therefore bona fide, the Department normally considers a number of factors such as: (1) the timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was made on an arms-length basis;²⁰ (6) as well as the business practices of the importer and U.S. customers.²¹ In this case and as further discussed below, the Department determines that the business practices of the importer and U.S. customer are so atypical and unusual that no other factors need to be analyzed.

When performing its bona fide analysis, the Department reviews the circumstances surrounding a respondent's sales of subject merchandise that entered the United States during the

¹⁵See New Donghua, 374 F. Supp. 2d at 1340, n.5, citing TTPC, 366 F. Supp. 2d at 1260, and Certain Preserved Mushrooms From the People's Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review, 68 FR 41304 (July 11, 2003), and accompanying Issues and Decision Memorandum at Comment 2.

¹⁶See TTPC, 366 F. Supp. 2d at 1250.

¹⁷See id. at 1263.

¹⁸See New Donghua, 374 F. Supp. 2d at 1339.

¹⁹See id.

²⁰See TTPC, 366 F. Supp. 2d at 1250.

²¹See New Donghua, 374 F. Supp. 2d at 1343-44.

POR.²² Concurrent with this notice, we are issuing a business proprietary memorandum²³ detailing our analysis of the bona fides of Dongtai Peak's U.S. entries and our preliminary decision to rescind the administrative review of Dongtai Peak based on the totality of the circumstances of its sales, because much of the information relied upon by the Department to analyze the bona fides issue is business proprietary. The Department determined that the sales made by Dongtai Peak were not bona fide for the following reasons: 1) the ultimate disposition of the honey is unknown, and no documentation was produced to demonstrate its status; 2) the licensing inconsistencies of the U.S. importer and its resale customer; and 3) the unusual channels of trade which the honey entered following its importation. Therefore, we preliminarily find that Dongtai Peak's sales that entered the United States during the POR are not bona fide commercial transactions, and that Dongtai Peak's sales entering the United States during the POR do not provide a reasonable or reliable basis for calculating a dumping margin.

Preliminary Determination To Rescind

As discussed above,²⁴ we preliminarily determine that Dongtai Peak's U.S. sales were not bona fide commercial transactions; accordingly, Dongtai Peak has not met the requirements to qualify for an administrative review during the POR. Therefore, the Department is preliminarily rescinding this review with respect to Dongtai Peak because Dongtai Peak has no reviewable entries during the POR.²⁵

²² See Dongtai Peak's Sections C and D Questionnaire Response, submitted April 4, 2011, at C-1.

²³ See Memorandum to the File from Josh Startup, International Trade Analyst, through Catherine Bertrand, Program Manager, to James C. Doyle, Director, regarding "Antidumping Duty Administrative Review of Honey from the People's Republic of China: Bona Fide Analysis of Sales Under Review for Dongtai Peak Honey Industry Co., Ltd.," dated concurrently with this notice ("Dongtai Bona Fides Memo").

²⁴ See also Dongtai Bona Fides Memo.

²⁵ See TTPC, 366 F. Supp. 2d at 1249 ("{P}ursuant to the rulings of the Court, Commerce may exclude sales from the export price calculation where it finds that they are not bona fide").

Public Hearing

Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review.²⁶ Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments may be filed no later than five days after the deadline for filing case briefs.²⁷ Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: 1) a statement of the issue; 2) a brief summary of the argument; and 3) a table of authorities.²⁸

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of this administrative review, interested parties may submit publicly available information to value factors of production (“FOPs”) within 20 days after the date of publication of these preliminary results. Interested parties must provide the Department with supporting documentation for the publicly available information to value each FOP. Any interested party may request a hearing within 30 days of publication of this notice.²⁹ Hearing requests should contain the following information: (1) The party’s name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.³⁰ The Department will issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. For the companies

²⁶ See 19 CFR 351.309(c)(ii).

²⁷ See 19 CFR 351.309(d).

²⁸ See 19 CFR 351.309(c) and (d).

²⁹ See 19 CFR 351.310(c).

³⁰ See 19 CFR 351.310(d).

receiving a separate rate that were not selected for individual review, we will assign an assessment rate based on rates calculated in previous reviews. Due to the fact that this review of Dongtai Peak is preliminarily rescinded, if this preliminary rescission is adopted in our final results of review, Dongtai Peak's antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(2). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Christian Marsh
Acting Assistant Secretary
for Import Administration

December 23, 2011
Date

[FR Doc. 2011-33669 Filed 12/30/2011 at 8:45 am; Publication Date: 01/03/2012]